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International Covenant on Civil and Political Rights

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**Human Rights Committee**

# Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2252/2013*, **

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| *Communication submitted by:* | Annadurdy Khadzhiyev, on his own behalf and on that of his sister, Ogulsapar Muradova (represented by counsel, Rupert Skilbeck, of the Open Society Justice Initiative) |
| *Alleged victims:* | The author and his sister |
| *State party:* | Turkmenistan |
| *Date of communication:* | 9 April 2013 (initial submission) |
| *Document references:* | Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 12 June 2013 (not issued in document form) |
| *Date of adoption of Views:* | 6 April 2018 |
| *Subject matters:* | Torture; death in custody |
| *Procedural issue:* | Non-substantiation of the claims |
| *Substantive issues:* | Torture; prompt and impartial investigation of torture; right to life; arbitrary arrest or detention; fair trial; presumption of innocence; adequate time and facilities to prepare a defence; legal assistance for a fair trial; right to appeal |
| *Articles of the Covenant:* | 6 (1) and 7, read alone and in conjunction with 2 (2) and (3); 9 (1) and (3); 14 (1), (2), (3) (b) and (d) and (5); and 19 |
| *Article of the Optional Protocol:* | 2 |

1. The author of the communication is Annadurdy Khadzhiyev, a national of Turkmenistan born in 1957, who is submitting the communication on his own behalf and on that of his sister, Ogulsapar Muradova, also a national of Turkmenistan born in 1948. Ms. Muradova was detained and died in custody in 2006. The author claims that the State party has violated their rights under articles 6 (1) and 7, read alone and in conjunction with

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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2 (2) and (3); 9 (1) and (3); 14 (1), (2), (3) (b) and (d) and (5); and 19 of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The author is represented by counsel.

**The facts as submitted by the author**

2.1 The author served as a deputy chairman of the National Bank of Turkmenistan before resigning in 1998. Due to widespread repression, he and his wife fled Turkmenistan in 2001. Before their departure, they were followed by an agent of the security services and their phone conversations were recorded. Later, in 2002, then-President Niyazov issued a decree banning current and former government officials from travelling abroad, and made a list of those who had already left. The author was specifically targeted. The authorities sought his extradition back to Turkmenistan, but he was granted refugee status in Bulgaria due to the political nature of the persecution against him.

2.2 After the author and his wife left the country, the authorities also harassed members of their family. For example, they approached Ms. Muradova, the author's sister, and tried to threaten her in order for her to testify against him. The authorities also threatened Ms. Muradova's children. Ms. Muradova herself was a journalist and human rights activist in Turkmenistan. Since she was concerned about the human rights situation in Turkmenistan, the author, Ms. Muradova and several other colleagues had co-founded the Turkmenistan Helsinki Foundation. The purpose of creating the Foundation was to monitor the human rights, freedoms and protection of the people of Turkmenistan and help and support everyone who suffered because of his or her convictions and beliefs. The organization was based in Varna, Bulgaria, because it could not operate in Turkmenistan under the oppressive regime of then-President Niyazov.

2.3 The Foundation remained very active until 2006. For example, the author and Ms. Muradova compiled a list of the names of several hundred dissidents who had been jailed for simply disagreeing with President Niyazov's regime. Ms. Muradova also consulted people on various human rights issues. She was active in cooperating with Radio Free Europe/Radio Liberty, which was considered the only source of independent news and information in Turkmenistan. The authorities periodically pressured Ms. Muradova to resign from her job and stop publishing critical remarks. She was called to the Ministry of National Security several times, she was followed everywhere by its secret agents and her landlines and mobile telephones were disconnected in April 2006.

2.4 On 18 June 2006, two Ashgabat city police officers came to Ms. Muradova's home and asked her to accompany them to the Ashgabat police station. One of the officers told Ms. Muradova's family that they needed to have a talk with her at the police station. They did not present an arrest warrant.

2.5 On 18 June, Ms. Muradova's daughters, S.M. and M.M., went to wait for their mother at the Ministry of Internal Affairs. A police official eventually approached them and demanded that they bring them Ms. Muradova's computer, fax machine and mobile telephone. S.M. and M.M. refused to surrender these items without a warrant. In response, the police official presented a statement, allegedly signed by Ms. Muradova, instructing them to surrender the items. The police then allowed the two daughters to communicate with their mother using a handheld radio transceiver, and Ms. Muradova told them to do as the official said. However, her speech was slurred and inconsistent and her words incoherent. This raised fears that she had been drugged or otherwise abused before they spoke. The authorities ultimately seized the equipment.

2.6 When her daughters reported her detention to the Organization for Security and Cooperation in Europe, they were detained on 19 June 2006. During the detention, both S.M. and M.M. were threatened with dismissal from their jobs. One of them was also told that she would be arrested and prevented from seeing her infant child. Ms. Muradova's daughters were finally released on 1 July 2006. They were never provided with any official documents or explanations regarding their arrest and both were subsequently dismissed from their jobs.

2.7 The authorities also detained Ms. Muradova's brother, Mr. Khadzhiyev, and Mr. Amanklyuchev, who was arrested on 16 June 2006. Mr. Khadzhiyev was arrested

immediately after Ms. Muradova, on 18 June 2006. The day after her arrest, President Niyazov held a televised meeting at which he and other senior government officials condemned Ms. Muradova and her colleagues as traitors who should be condemned for their work for the Turkmenistan Helsinki Foundation and for assisting foreign journalists, which was described as "gathering slanderous information in order to sow discontent among the population".

2.8 Ms. Muradova was charged with illegal acquisition, sale, storage, transportation or carrying of ammunition, firearms or explosives by a group of persons with prior agreement, a crime punishable by imprisonment for a term of between two and seven years, under article 287 (2) of the Criminal Code. The prosecution contended that, while at Ms. Muradova's home, Mr. Khadzhiyev had given several rounds of ammunition to Mr. Amanklyuchev to sell. Ms. Muradova maintained her innocence and refused to cooperate with the investigation.

2.9 Ms. Muradova was detained virtually without contact with the outside world until her trial on 25 August 2006. Her lawyer was afraid of taking her case; he gave her daughters conflicting information about whether he had met with her in custody, admitting that the authorities were putting pressure on him. During this two-month period, the authorities attempted to make Ms. Muradova confess to the crimes she had been charged with. Ms. Muradova's family was never allowed to visit her during her detention. In one of the few messages she was able to send to her family, Ms. Muradova said that she "could not stand the mistreatment" she was suffering. Because of the limited contact with her family, Ms. Muradova was not able to describe further the physical conditions of detention.

2.10 Ms. Muradova's family was not informed regarding the trial date. On 25 August 2006, they were waiting near the courthouse, and Ms. Muradova's lawyer told them that the trial would be held that same day. The authorities threatened that the defendants would be charged with additional crimes of espionage and high treason, but in the end, they were only tried on weapons-related charges.

2.11 On 25 August 2006, Ms. Muradova and her two colleagues were found guilty of possessing weapons, following a trial behind closed doors that lasted less than two hours. Turkmen officials excluded all members of the public, including her family, and blocked the road to the court building to prevent access to it. Agents of the Ministry of National Security were posted near the courthouse and filmed everyone who approached the building. Ms. Muradova was sentenced to six years in prison. The court never issued a written judgment, which prevented her lawyer from filing a meaningful appeal.

2.12 Ms. Muradova's family and lawyer never received a copy of the indictment. During the trial, the authorities prevented Ms. Muradova and her colleagues from presenting their case. Soldiers at the courthouse initially blocked Ms. Muradova's lawyer from entering the building, but he was later allowed in. Ms. Muradova and her colleagues were not permitted to make full statements during the hearings.

2.13 After the trial, Ms. Muradova was kept in a temporary detention facility of the Ministry of Internal Affairs. The police did not inform Ms. Muradova's family about her whereabouts. The author believes that she was kept in a pretrial detention facility to continue the abuse.

2.14 On 14 September 2006, a neighbour who was a former law enforcement officer informed Ms. Muradova's family that she had died in custody. Morgue employees only permitted her family to see her body after officials from the United States Embassy and the Organization for Security and Cooperation in Europe demanded it. The injuries on her body indicated that she had died violently. The following marks were observed on her body (a) a deep vertical red cut in the middle of her forehead, which was 5 cm long; (b) a dark mark around her neck suggesting strangulation, about 1 cm wide; (c) three open red wounds on one of her hands; (d) swelling and bruising to the ankle of one of her legs; and (e) a large bruise on one of her lower thighs.

2.15 In addition to the injuries listed above, Ms. Muradova's body had a long deep cut from the neck to the waist, which had been sown back together, indicating that an autopsy had been conducted. The German public radio station, Deutsche Welle, reported that the

Government had carried out an autopsy on 12 September 2006. It also reported that the body showed signs of strangulation. Allegedly, the autopsy also found internal bleeding from the liver and left kidney, indicating possible beatings inflicted several days before death.

2.16 The autopsy and its results were never disclosed to the family or made public. The family's request for an independent autopsy was rejected and the authorities claimed that Ms. Muradova had died of natural causes. Despite the many signs of torture and mistreatment, the Government refused to investigate. Recently, the Government has changed its position on the cause of her death, telling the Committee to Protect Journalists that it was a suicide.

2.17 Despite repeated calls from the international community to investigate her mistreatment and death and to provide redress to her family, the State party has done neither. Instead, it harassed Ms. Muradova's daughters when they tried to draw international attention to her case. In the 10 to 15 days after Ms. Muradova's death, her daughters called the author to tell him that they were being harassed and threatened for being in contact with the Turkmenistan Helsinki Foundation. They were taken to the Ministry of National Security, where officials showed them the records of all their telephone conversations. The information was reported in the media; including the fact that their telephones had been wiretapped.

2.18 Once Ms. Muradova's daughters provided this information to the author, he immediately reported it to organizations such as Human Rights Watch and Amnesty International. The author asked Ms. Muradova's daughters whether it would be better if they stopped calling him. They said they would find a way to inform him if something happened. They were all dismissed from their jobs; and they could not find other employment because of the pressure from the Ministry of National Security. They were under pressure for about a year. They were summoned to the police station and threatened so as to stop them from talking about their mother's death. The pressure from the Government subsided to some extent when the author stopped communicating with them through direct channels.

2.19 After Ms. Muradova's death, her co-defendants were transferred to Akdash prison. They were not able to receive any family visits or even telephone calls for the first two years of their incarceration. Mr. Khadzhiyev and Mr. Amanklyuchev were released in February 2013 after serving their prison terms, but it is not possible for the author to speak with them due to safety concerns.

2.20 The State party's authorities rendered all domestic remedies unavailable or otherwise ineffective. The authorities threatened and pressured Ms. Muradova's children not to talk about their mother's torture and death. The author himself, who does not reside in Turkmenistan, does not have access to the courts in the country. Even if he did, complaining to the court would have posed a danger not only to the author and his family, but also to Ms. Muradova's children.

2.21 The author's communication does not constitute an abuse of the right of submission under rule 96 (c) of the Committee's rules of procedure, since there has not been an "unreasonable delay".[1] Because domestic remedies were not available to the author, he tried other means to seek redress, for example through persistent media campaigns and appeals to United Nations bodies, diplomats and non-governmental organizations (NGOs). The present communication has thus been filed as an ongoing campaign to seek justice for Ms. Muradova. In addition, Turkmen officials have recently claimed that some kind of domestic investigation has been conducted.[2] The five-year limit should be calculated from the end of this investigation, although the State party's authorities have not disclosed any additional information regarding this investigation.

2.22 There is a "pervasive system of human rights abuses" in Turkmenistan. The Government represses political dissidents, controls media, mistreats and kills detainees and denies the right to a fair trial. It has been described as one of the "most repressive and

[1] See *Klain and Klain v. Czech Republic* (CCPR/C/103/D/1847/2008), para. 7.5.

[2] The author provides no further information in this regard.

totalitarian regimes in the world",[3] which has an "appalling human rights record".[4] Various bodies, including the General Assembly, the Committee on the Rights of the Child, the United States Department of State, as well as the Secretary-General and others, have reported on the fact that torture and ill-treatment were widespread in Turkmenistan in 2006. Such practices persist to this day.

2.23 Ms. Muradova was repeatedly the object of attention of State authorities for her work. Officials of the Ministry of National Security pressured her repeatedly to stop her human rights activities at the Turkmenistan Helsinki Foundation. Turkmen authorities followed her, kept her apartment under surveillance, and threatened to imprison her children and even to evict her from her home if she did not stop contributing to Radio Free Europe/Radio Liberty. Ms. Muradova's arrest followed all these actions by the State party's authorities, which were thus explicitly linked to her work as a human rights defender and journalist. This shows that her pretrial detention was not justified, and was used to stop her work and others' willingness to engage in this kind of work. Immediately after her detention, police officials sought access to her computer, fax machine and mobile telephone, which were key tools in her work as a journalist. The circumstances leading to Ms. Muradova's arrest and detention were thus related and show that she was targeted for her work as a journalist and human rights activist.

2.24 The televised statement of the authorities described Ms. Muradova's work as "gathering slanderous information in order to sow discontent among the population".[5] The author submits that the treatment of Ms. Muradova had no justification in law. The denial of her rights was not necessary to ensure respect for the rights or reputations of others, or to protect public health or morals, as Ms. Muradova was merely attempting to expose the Government's human rights abuses.

**The complaint**

3.1 The author claims that article 6 (1) of the Covenant was violated because Ms. Muradova died in custody and the injuries found on her body indicate that she died as a result of torture and ill-treatment.

3.2 The State party's authorities tortured and mistreated Ms. Muradova to punish her for her human rights activities and journalism and in an attempt to compel her to confess about her "subversive activities". The criminal charges against Ms. Muradova were fabricated. The ill-treatment that eventually killed her amounts to torture in violation of article 7 of the Covenant.

3.3 The author alleges a violation of articles 6 (1) and 7 of the Covenant in conjunction with article 2 (2) and (3) in that the State party failed to take measures to protect Ms. Muradova from torture and from arbitrary deprivation of her life and has not conducted any investigation on how she died; it has only provided implausible and inconsistent explanations of the reasons for her death.

3.4 The law in force when Ms. Muradova was arrested provided for a prosecutor, and not a judge or other impartial officer, to rule on her detention. The author claims that the failure to bring her before a judge upon arrest violated the provisions of article 9 (3) of the Covenant.

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[3] Human Rights Watch, "Human Rights Watch submission to the United Nation Committee against Torture on Turkmenistan" (April 2011). Available at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TKM/INT_CAT_NGO_TKM_46_10143_E.pdf.

[4] Amnesty International, "Keeping up the pressure: former POC Farid Tukhbatullin's campaign for change in Turkmenistan", *Urgent Action in Focus* (June 2005).

[5] The author also submits that Human Rights Watch called Ms. Muradova's arrest and detention "politically motivated". Amnesty International stated that there were "strong indications" that the charges against Ms. Muradova were "fabricated" and the Committee to Protect Journalists stated that she was persecuted for her journalistic work with Radio Free Europe/Radio Liberty. The Working Group on Arbitrary Detention found that Ms. Muradova's colleagues, Mr. Amanklyuchev and Mr. Khadzhiyev, were subjected to arbitrary detention because of the exercise of their fundamental rights to freedom of expression and association and to work in favour of the protection and promotion of human rights.

3.5 Moreover, the Turkmen authorities publicly declared Ms. Muradova guilty before her trial, denied her the prompt effective assistance of a lawyer, including during her interrogation, closed her trial to the public, and prevented her from meaningfully appealing her conviction by failing to issue a written judgment. This violated her rights under article 14 (1), (2), (3) (b) and (d) and (5) of the Covenant.

3.6 The Turkmen authorities arbitrarily detained, tortured and killed Ms. Muradova to silence her journalism and human rights activism, in violation of articles 9 (1) and 19 of the Covenant.

**State party's observations on admissibility and the merits**

4.1 In its observations dated 11 December 2015, the State party submits that Ms. Muradova was charged with weapons-related crimes under article 287 of the Criminal Code. On 17 August 2006, Ms. Muradova was convicted and sentenced to six years' imprisonment. In September 2006,[6] Ms. Muradova committed suicide by hanging herself. The prosecutor's office decided to review the incident, which did not result in a formal investigation since no crime had been committed. Ms. Muradova's body was transferred to her family.

4.2 Ms. Muradova's conviction was proved on the basis of witness statements, physical evidence and expert testimonies. The author's allegations regarding violations of the Covenant are refuted by the materials of the criminal case against her.[7]

**Author's comments on the State party's observations on admissibility and the merits**

5.1 On 4 March 2016, the author submitted that the State party had failed to provide explanations as to how the authorities had concluded that Ms. Muradova had committed suicide. The State party only makes a general statement that the death was examined by the prosecutor's office. The State party's submission does not mention the exact date of the death or any details regarding the investigation. Such a superficial assertion cannot satisfy the State party's obligation to conduct an effective investigation and provide a proper explanation for a death in custody.

5.2 The State party also does not explain how Ms. Muradova received her obvious injuries, as described above (see para. 2.14). The State party does not provide any details or supporting documentation with regard to any autopsy results, although it is clear that one was conducted on Ms. Muradova's body. Where an individual makes an allegation of torture or dies in custody, the Committee has, on numerous occasions, found that the burden of proof cannot rest solely with the author of the communication, especially considering that the authors and the State party do not always have equal access to the evidence. Rather, the burden shifts to the State party to provide a satisfactory and plausible explanation supported by evidence.[8] If death occurs in custody, it should be regarded prima facie as a summary or arbitrary execution, unless this presumption can be rebutted by a thorough, prompt and impartial investigation.[9]

5.3 It is undisputed that Ms. Muradova died in custody. The author provides an account of the strong indications that she was tortured and killed in detention, submitting as much detail as possible, given the incommunicado detention of Ms. Muradova, the threats to her family members and the refusal of the authorities to release the autopsy results. The State party's response is entirely inadequate. The State party, for example, failed to address the detailed allegations about the lack of safeguards against torture. The family members and the lawyer lacked access to Ms. Muradova, and this left her vulnerable to torture and death.

5.4 Furthermore, the State party failed to provide any information regarding her trial. The family members and other members of the public were prevented from attending the court hearings, no written judgment was provided to the family, which made filing an appeal all but impossible. Ms. Muradova's presumption of innocence was violated when

[6] A specific date is not provided.
[7] The State party's response consists of a one-page submission.
[8] See *Bleier v. Uruguay* (A/37/40, annex X), para. 13.3.
[9] See *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.2.

the then-President Niyazov called the defendants "traitors". Even the date of the trial and conviction is not clear — while the State party claims that the author was convicted on 17 August 2006, multiple sources, including family members, indicate that Ms. Muradova's trial and conviction occurred on 25 August 2006.

5.5 The State party also failed to address the claims related to freedom of expression and retaliation for Ms. Muradova's human rights work.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that domestic remedies were not available to the author. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the author's argument that the present submission should not constitute an abuse of the right of submission under the provisions of rule 96 (c) of the Committee's rules of procedure. The Committee recalls that a communication may constitute an abuse of the right of submission when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication unless there are reasons to justify the delay, taking into account all the circumstances of the communication. The Committee notes the author's uncontested submission that Turkmen officials have claimed that some kind of domestic investigation has been conducted, but that the State party's authorities have not disclosed any additional information regarding it. The Committee also notes the author's claims that the family members received threats and feared reprisals from the State party's authorities. Taking into account all the circumstances of the present communication, the Committee concludes that there are reasons to justify the delay in its submission and that it is not precluded from considering the communication under article 3 of the Optional Protocol.

6.5 The Committee notes the author's claim under article 2 (2) of the Covenant. The Committee concludes, however, that the author has failed to sufficiently substantiate this claim for the purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers that the author has sufficiently substantiated the claims under articles 6 (1) and 7, read alone and in conjunction with articles 2 (3), 9 (1) and (3), 14 (1), (2), (3) (b) and (d) and (5) and 19 of the Covenant, for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes, first of all, the author's contention that Ms. Muradova was tortured in detention, and died as a result of this torture and ill-treatment. The author provides a detailed description of the injuries on Ms. Muradova's body, including the cut on her head and the signs of strangulation. The author suggests that these injuries on Ms. Muradova's body indicate that she died as a result of physical violence. The Committee also notes the allegations that an autopsy was carried out after her death, and regrets that the State party neither refutes the author's claim about physical violence, nor provides the results of the examination. The State party, instead of providing a detailed explanation of

the death in custody, simply states that Ms. Muradova committed suicide, without supporting its position with any evidence, documentary or otherwise.

7.3 The Committee recalls its jurisprudence, according to which the States parties, by arresting and detaining individuals, take responsibility to care for their life.[10] Loss of life occurring in custody, especially when accompanied by reliable reports of a potentially unlawful death, create a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations[11] under article 6 of the Covenant.[12]

7.4 The Committee notes that the State party has not presented evidence establishing that a prompt and thorough investigation took place that would rebut the author's allegations that Ms. Muradova was killed due to the torture she sustained while in custody. In the light of the detailed information contained in the author's submission, and the failure of the State party to provide any findings of the investigation or to provide any credible explanations for the circumstances of Ms. Muradova's death, the Committee finds that there has been a violation[13] of her rights under articles 6 (1) and 7 of the Covenant.[14]

7.5 As to the claims under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant on the grounds that the State party failed in its obligation to properly investigate Ms. Muradova's death and the allegations of torture and take appropriate remedial measures, the Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 (1) and 7 of the Covenant.[15] It further recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it stated that where investigations reveal violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible are brought to justice. Although the obligation to bring to justice those responsible for violations of articles 6 and 7 is an obligation of means, not of result,[16] States parties have a duty to investigate in good faith and in a prompt and thorough manner all allegations of serious violations of the Covenant made against it and its authorities. The Committee notes that, according to the information before it, the investigation into the allegations of torture and the subsequent death were not carried out promptly or effectively, and while the State party contends that Ms. Muradova committed suicide, no proof or evidence of the investigation itself has been provided.[17] The Committee considers that, in the light of the State party's refusal to provide the results of the autopsy report, or any other documentary evidence of the investigation, the State party denied the author and Ms. Muradova an effective remedy, in violation of Ms. Muradova's rights under article 2 (3), read in conjunction with articles 6 (1) and 7, and the author's rights under article 2 (3), read in conjunction with article 7.

7.6 The Committee observes that, although more than 10 years have elapsed since the death of Ms. Muradova, the author still does not know the exact circumstances surrounding it and the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with the torture or custodial death. The Committee understands the continued anguish and mental stress incurred by the author, as the brother of a deceased

[10] See *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2.

[11] See Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), para. 17.

[12] See *Eshonov v. Uzbekistan*, para. 9.2; and *Zhumbaeva v. Kyrgyzstan* (CCPR/C/102/D/1756/2008), para. 8.8.

[13] See *Mulezi v. Democratic Republic of the Congo* (CCPR/C/81/D/962/2001), para. 5.4.

[14] See *Sathasivam and Sarawathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.2; *Titiahonjo v. Cameroon* (CCPR/C/91/D/1186/2003), para. 6.2; *Telitsin v. Russian Federation* (CCPR/C/80/D/888/1999), para. 7.6; and *Dermit Barbato v. Uruguay* (CCPR/C/17/D/84/1981), para. 9.2.

[15] See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14, and its general comment No. 31, para. 18.

[16] See *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917,1918,1925/2009&1953/2010), para. 9.5.

[17] See *Eshonov v. Uzbekistan*, in which the Committee also noted the necessity of pursuing investigations through an independent commission of inquiry or similar procedure in cases of torture allegations if established investigative procedures were inadequate (para. 9.6).

detainee, given the refusal by the State party to provide any information regarding the investigation, including the findings of the autopsy, and considers that it amounts to inhuman treatment of the author, in violation of article 7 of the Covenant.

7.7 Regarding the author's claims that Ms. Muradova was arbitrarily detained as a result of her journalistic and human rights activities, in violation of her rights under articles 9 (1) and 19, the Committee notes the author's submission that Ms. Muradova co-founded a human rights organization, that she compiled a list of names of several hundred dissidents who were jailed, and that she cooperated with an independent radio station (paras. 2.2–2.3 above). In this regard, the Committee recalls its long-standing jurisprudence that the protection against arbitrary detention is to be applied broadly and that the "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, and lack of predictability and due process of law.[18] The Committee also recalls that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19).[19] The Committee notes the author's claims regarding a series of actions taken by the State party leading up to and including the arrest aiming at intimidating and silencing Ms. Muradova, explicitly targeting her activities as a human rights defender and journalist. It also notes the author's information regarding the televised statements of the then-President Niyazov and high officials and their call for the condemnation of Ms. Muradova for her human rights and journalistic work. The Committee considers therefore that the author has established that Ms. Muradova was arrested and detained for her journalistic and human rights work, a fact not refuted by the State party. In the circumstances described by the author, and in the absence of the State party's explanations regarding these elements of the communication, the Committee considers that there has been a violation of Ms. Muradova's rights under articles 9 (1) and 19 of the Covenant.

7.8 The author has further claimed a violation of article 9 (3) of the Covenant, as Ms. Muradova's pretrial detention was approved by a prosecutor and not by a judge. The Committee recalls provisions of its general comment No. 35 (2014) on liberty and security of person that a detainee must be brought promptly before a judge or other officer authorized by law to exercise judicial power and that it is inherent in the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial.[20] The Committee also concluded that a public prosecutor cannot be considered as an officer exercising judicial power[21] under article 9 (3) of the Covenant. Accordingly, and in the absence of the State party's submission in this regard, the Committee concludes that there has been a violation of Ms. Muradova's rights under article 9 (3) of the Covenant.

7.9 Regarding the author's contention that, although the trial hearings must be public according to domestic legislation, no relatives or members of NGOs were allowed in the courtroom, the Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it stated that all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly and that the publicity of hearings ensured the transparency of proceedings and thus provided an important safeguard for the interest of the individual and of society at large.[22] In the present case, the author contends that Ms. Muradova's friends and relatives, as well as members of the public, such as members of NGOs and representatives of embassies, were not allowed to be present. The author claims that the lawyer was also prevented from attending the trial at the beginning and that Ms. Muradova was not able to present her defence or make full statements. In the absence of any refutations by the State party, the Committee considers that due weight must be given to the author's allegations. The Committee therefore concludes that the facts as submitted disclose a violation of Ms. Muradova's rights under article 14 (1) of the Covenant.[23]

[18] See general comment No. 35, para. 12.
[19] Ibid, para. 17, quoting *Zelaya Blanco v. Nicaragua* (CCPR/C/51/D/328/1988), para. 10.3.
[20] See *Kulomin v. Hungary* (CCPR/C/56/D/521/1992), para. 11.3.
[21] See general comment No. 35, para. 32.
[22] See general comment No. 32, para. 28.
[23] See, for example, *Amanklychev v. Turkmenistan* (CCPR/C/116/D/2078/2011), para. 7.4.

7.10 The Committee notes the author's allegations that the presumption of innocence was not respected regarding Ms. Muradova and her co-defendants, because she and several of her colleagues were pronounced as traitors who should be condemned by then-President Niyazov only a day after her arrest. In this respect, the Committee recalls its jurisprudence,[24] as also reflected in its general comment No. 32, according to which the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with this principle.[25] The Committee notes the author's claims that the whole trial lasted only two hours, and that Ms. Muradova was not able to present her case. On the basis of the information before it and in the absence of any other pertinent information or argumentation from the State party, the Committee considers that the facts as presented demonstrate that the right of Ms. Muradova to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, has been violated.

7.11 The Committee notes the author's allegations regarding the violations of Ms. Muradova's right to a fair trial under article 14 (5). In this regard, the Committee also notes that the State party has not refuted these claims. The author alleges that Ms. Muradova's trial lasted less than two hours, that, in the beginning, the lawyer was not granted access to his client and that the lawyer, and family members, never received the written judgment of the court, which made further appeals all but impossible. The Committee recalls its consistent jurisprudence and the provisions of its general comment No. 32 that the right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgment of the trial court, and, at least in the court of first appeal where domestic law provides for several instances of appeal,[26] also to other documents, such as trial transcripts, necessary to enjoy the effective exercise of the right to appeal.[27] The Committee notes that Ms. Muradova — or her family members after her death — never received a copy of the written judgment of the court. In the absence of any information from the State party in that regard, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the absence of any practical possibility for Ms. Muradova or her counsel to file an appeal in the circumstances described discloses a violation of article 14 (5) of the Covenant.

7.12 Having thus come to a conclusion regarding a violation of Ms. Muradova's rights under article 14 (1) and (2), the Committee decides not to examine the claims regarding Ms. Muradova's rights under article 14 (3) (b) and (d) separately.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 6 (1) and 7, read alone and in conjunction with articles 2 (3); 9 (1) and (3); 14 (1), (2) and (5); and 19, with regard to Ms. Muradova. The Committee further concluded that the State party violated the author's rights under article 7, read separately and in conjunction with article 2 (3), of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, take appropriate steps to: (a) conduct a thorough, prompt and impartial investigation into Ms. Muradova's arbitrary arrest and detention, torture and death in custody, including, if necessary, by creating an independent commission of inquiry; (b) provide full redress to the author and other family members of Ms. Muradova, including adequate compensation and other measures of satisfaction, including rehabilitation for the name of Ms. Muradova, for the violations of her rights; and (c) provide all information regarding the investigation, including the findings of the autopsy, if one was conducted, and

[24] See, for example, *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.3; and *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006), para. 6.5.

[25] See general comment No. 32, para. 30.

[26] See *Van Hulst v. Netherlands* (CCPR/C/82/D/903/1999), para. 6.4; *Bailey v. Jamaica* (CCPR/C/66/D/709/1996), para. 7.2; and *Morrison v. Jamaica* (CCPR/C/64/D/663/1995), para. 8.5.

[27] See *Lumley v. Jamaica* (CCPR/C/65/D/662/1995), para. 7.5.

copies of trial transcripts and the court judgment to her lawyer and the family members. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.